

THE fairies are not dead—

O, we are blind and weak—
We daily yearn and seek
For miracles like those of long ago:
We moan and murmur still,
As if this falling snow
Were not a Miracle! T. B. ALDRICH.

From Judge Smith's Opinion in the case of Sherman M. Booth,

[illegible]

From Judge Smith's Opinion in the same case when before the full

Perhaps it would not, under other circumstances, be required to reply to suggestions which connect have denoted worthy of consideration; but in the present case, it was so important in which they have been made, and it was so important to consider them, and perhaps others, as they may incidentally occur in the discussion of the principles which have been brought to bear upon the consideration of this case.

The counsel opposed to the application of the convention have thought that it was their duty to do what it is their duty to do in "judicial sanctuary." If, by this, it was intended to intimate that the power or tendency of faction might become the rule of its action, or should be considered in its judgment, instead of the law as it is, he ought to have reflected that the law as it is, is the only one that can be applied to either the bench or the bar, and that the only way to forget their allegiance to the law, as to pursue the devious and turbulent pathway indicated by the suggestion. The history of the profession does not warrant it. The positions assumed by the Justice on the primary meeting do not justify it.

We know no party or class, and desire to know none. We are bound by the law only, and its due administration, is the object of our solicitude. Our aim is to adjudicate upon cases, not parties; to apply the law as it is, not as we may think it ought to have been; to construe the properly constituted laws, and give them effect, not as from the time of knowledge and wisdom to appear, and to have framed it.

As has been suggested, in constraining and applying the constitution, "and the laws made in pursuance thereof," ought our reason and judgment to be

Nor was the Constitution of the United States submitted to the whole people of the thirteen States for their sanction, but to the people of each State, represented in its convention called for that purpose, by the authority of its State. On the question of its adoption or rejection, the people of each State, whether many or few, had an equal voice. They spoke on that question for their State, and the small States had an equal voice with the great.

Nor was the Constitution to become operative when a majority of the whole people of the proposed Union should ratify it, but when ratified by the conventions of nine States, and then only upon the States, and the people of the States, so ratifying it. It had no opera-

particular subject or class of subjects, cannot, upon legitimate mode of interpretation, be considered comprising the whole of such subject or class of subjects, to the exclusion of every other subject or class. Several powers may be conferred upon a given class of subjects; and each may comprehend them all. The extension of a writ to a subject by no means merges it exclusively within such power.

But we are relieved from the necessity of criticism on these words, by another provision of the same instrument, which is in the following words:

"This Constitution shall extend to all Cases arising under the United States which shall be brought before us, *in pursuance thereof*, and all treaties made, as well as those which shall be made, under the authority of the United States."

It will be observed that the words "in pursuance thereof," do not extend to every case which arises under the Constitution, but to cases arising thereunder; *see Const. U. S., Art. d.*

Here is a distinct recognition of the power and duty of State Judges, not to take cognizance of cases arising under the Constitution and decrees of the Congress or by the Federal Court, or by their interpretation of the Constitution and acts of Congress, but by *this Constitution*; "*and the laws in pursuance thereof*." The requirement is, that the State Judges shall conform to the Constitution, and decide cases arising thereunder which may arise within their jurisdiction under the laws of the United States.

Made in pursuance thereof. It will be seen that the State Judges and Courts are by no means alienated at instrument, but bound by it in the same manner as the Federal Courts and Judges. They were intended to be, in former provisions, they were intended to have sole, exclusive and ultimate power of that class of subjects in the Federal Courts and Judges, why should

ment can only operate within the precise sphere allotted by the Constitution; that the only sphere of the Union is that which is assigned to it by the Constitution; that the other department of the Federal Government; that an act of Congress without the constitutional sphere would be no law; that a judicial determination without the constitutional sphere would be an injustice; that of the three departments of the State, judges are in question before them, so as to ascertain the reach acts are "made in pursuance" of the Constitution; because, if so, the State Judges are not thereby; and not otherwise.

The States never yielded to the Federal Government the guaranties of the liberties of their people. In carefully specified instances they delegated that Government the power to punish, and so far, so far only, withdraw their protection. In all they reserved the power to preserve themselves in conduct, and to oblige themselves to themselves the obligation to protect and secure the rights of their citizens declared to be inalienable, viz.: "Life, liberty, and the pursuit of happiness."

It will readily be conceded that the main provision of the people have made in the organization of a government for the protection of these rights, and individually, is found in the judicial department. That is, the arm of sovereignty, whose aid citizen invokes when these rights are individually invaded. The Courts are open to receive his complaint and to afford him redress.

Every citizen has the right to demand. Every citizen has the right to appeal to the fundamental charter of both sovereignties to which he owes allegiance, to test the validity of the authority by which

newspapers are all giving, one from the other, glowing note of Macaulay's, as an overwhelming of the historian's astonishing labors:

There is a noble, and I suppose, unique collection of the papers of William's reign, in the British Museum. I have never seen a page in that collection.

A quotation serves, however, to prove, not so the diligence of the historian, as the astonishingness of those who cite it. They seem to imagine newspapers were as plenty and as full of matter as William's day was in ours. They were in fact very and contained very little. The first daily paper to appear till Queen Anne's reign, nor was till then a single English newspaper published out of town. We will venture to say that there is far reading matter in a file of THE TRIBUNE for a year than in the whole of the "noble and excellent" collection, the "turning over of every leaf" which is guessed at as such a Herculean labor. Many know one thing at least—how to bait his for judgments, of which few men have caught then be.

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New Post-Office has been established in Haverhill, Suffolk County, L. I., which place deserves a long notice. The village contains about three hundred inhabitants, and for the past twenty years is famous for the sale of intoxicating liquors has been.

In the same period of time the writer can call the death of seventeen persons whose united amount to 1,447 years—the average of which is 84.5 years. We think very few places can do the same with a like population. — of